

*AN INTRODUCTION TO
THE ENVIRONMENTAL
BILL OF RIGHTS*

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AN INTRODUCTION TO THE ENVIRONMENTAL BILL OF RIGHTS

“The Environmental Bill of Rights is built on the principle that everyone has the right to participate in the decisions which affect their environment. Ontario’s Bill will give people unprecedented rights to act on their commitment to protect the environment. It’s been written for the public, in public and — to a great extent — by the public.

The Bill creates a win-win situation for everyone. It will open up the government’s environmental decision-making process to much greater public scrutiny. It will provide business with a uniform and predictable process for obtaining environmental approvals. It will give the public the information it needs for meaningful participation. And, above all, the Environmental Bill of Rights will protect the environment to a greater degree than ever before.

Ontario’s long-term health and prosperity depend on our success in restoring and protecting the environment. A clean environment creates incentives for investment in Ontario, bringing with it real economic growth and opportunities for job creation. The Environmental Bill of Rights is part of the Ontario Government’s 10 point plan to put Ontarians back to work.

It is our hope that the Bill will become a landmark for the environment and for democracy in Ontario.”

C.J. (Bud) Wildman

Minister of Environment and Energy

HISTORY

OCTOBER 1, 1991

- The Ontario Government announced the creation of an Environmental Bill of Rights Task Force
- **THE TASK FORCE:** (made up of representatives from business, environmental groups, the legal profession, and government)

Chair:

Michael Cochrane

Co-Chair:

Gary Posen (former Deputy Minister, Environment)

Members:

Robert Anderson, Business Council on National Issues
George Howse, Canadian Manufacturers' Association
John Macnamara, Ontario Chamber of Commerce
Andrew Roman, Environmental/administrative law Lawyer
Paul Muldoon, Pollution Probe
Richard Lindgren, Canadian Environmental Law Association
Sally Marin, Legal Counsel, Ministry of Environment and Energy

OCTOBER 1991 – JUNE 1992

- Through extensive consultation with members of their constituencies, the Task Force ensured broadbased input for the development of the draft Bill.
- The Task Force's report, including a draft Bill developed by consensus, was introduced to the Legislature on July 8, 1992.

JULY – DECEMBER 1992

- The Ministry of the Environment (now Ministry of Environment and Energy) invited public comment on the draft Bill.
- Comments were received from labour, farmers, business and industry, municipalities, environmentalists, environmental consultants, lawyers and other individuals.
- The Task Force reviewed the public comment and made 59 supplementary recommendations.

JANUARY 15, 1993

- The Task Force's supplementary recommendations were presented to the Minister.

JANUARY – MAY, 1993

- Preparation of the final Environmental Bill of Rights based on the Task Force Report, the draft Bill and the supplementary recommendations.

SPRING 1993

- Bud Wildman, Minister of Environment and Energy, introduced the Environmental Bill of Rights into the House.
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THE PRINCIPLES AND PURPOSES OF THE ENVIRONMENTAL BILL OF RIGHTS

"THE PEOPLE OF ONTARIO RECOGNIZE THE INHERENT VALUE OF THE
NATURAL ENVIRONMENT.

THE PEOPLE OF ONTARIO HAVE A RIGHT TO A HEALTHFUL
ENVIRONMENT.

THE PEOPLE OF ONTARIO HAVE AS A COMMON GOAL THE
PROTECTION, CONSERVATION AND RESTORATION OF THE NATURAL
ENVIRONMENT FOR THE BENEFIT OF PRESENT AND FUTURE
GENERATIONS.

WHILE THE GOVERNMENT HAS THE PRIMARY RESPONSIBILITY FOR
ACHIEVING THIS GOAL, THE PEOPLE SHOULD HAVE MEANS TO
ENSURE THAT IT IS ACHIEVED IN AN EFFECTIVE, TIMELY, OPEN AND
FAIR MANNER."

(Preamble to the Environmental Bill Rights, 1993)

THE PURPOSES OF THE EBR

- To provide a means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario.
- To provide increased accountability of the Government of Ontario for its environmental decision making.
- To provide increased access to the courts by residents of Ontario for the protection of the environment; and
- To provide enhanced protection for employees who take action in respect of environmental harm.

The Bill will place greater emphasis on making right environmental decisions in the first place. It will require greater political accountability when government makes decisions. If the government fails to protect the environment, citizens may go to the courts. The courts are seen as a last resort.

SUMMARY OF THE BILL

PARTS OF THE ENVIRONMENTAL BILL OF RIGHTS

- Part 1:* Definitions and Purpose
- Part 2:* Public Participation in Government Decision Making:
 - The Environmental Registry
 - Ministry Statement of Environmental Values
 - Proposals for Policies, Acts, Regulations and Instruments
 - Public Appeals of Decisions – Class 1 and 2 Instruments
- Part 3:* The Environmental Commissioner
- Part 4:* Application for Review
- Part 5:* Application for Investigation
- Part 6:* Right to Sue:
 - Contravention Causing Harm to a Public Resource
 - Public Nuisance Causing Environmental Harm
- Part 7:* Employer Reprisals
- Part 8:* General:
 - Regulations under the Act

WHAT DOES THE ENVIRONMENTAL BILL OF RIGHTS MEAN TO YOU?

HOW DO I ACCESS INFORMATION?

THE ELECTRONIC REGISTRY

- PART II of EBR

WHO WILL HOLD GOVERNMENT ACCOUNTABLE?

THE ENVIRONMENTAL COMMISSIONER

- PART III of EBR
-

WHAT DOES THE ENVIRONMENTAL BILL OF RIGHTS MEAN TO YOU?

CONTINUED

HOW CAN I
PARTICIPATE?

PUBLIC PARTICIPATION

- PART II of EBR
- Statement of Environmental Values
- Proposals for Policies, Acts, Regulations and Instruments

WHAT CAN I DO IF I
DISAGREE WITH A
DECISION TO ISSUE
AN INSTRUMENT?

PUBLIC APPEALS

- PART II of EBR
- Class I and II Instruments

CAN I CHANGE A PAST
DECISION?
CAN I ASK FOR THINGS
TO BE DONE DIFFERENTLY
IN THE FUTURE?

REQUEST FOR REVIEW

- PART V of EBR
- Existing Act, Regulation, Policy or Instrument (as prescribed)
- New Act, Policy or Regulation

WHAT CAN I DO IF I BELIEVE
SOMEONE IS BREAKING
THE LAW?

REQUEST FOR INVESTIGATION

- PART V of EBR

CAN I SUE SOMEONE WHO
I BELIEVE IS BREAKING
THE LAW AND AS A
RESULT HAS HARMED
ONTARIO'S PUBLIC
RESOURCES?

RIGHT TO SUE

- PART VI of EBR
- New Cause of Action

CAN I SUE IF I HAVE
SUFFERED A LOSS FROM
AN ENVIRONMENTAL
PUBLIC NUISANCE?

RIGHT TO SUE

- PART VI of EBR
- Public Nuisance

AM I PROTECTED FROM
MY EMPLOYER IF I
PARTICIPATE IN EBR
OR 'BLOW THE WHISTLE'?

EMPLOYEE REPRISALS

- PART VII of EBR
- Ontario Labour Relations Board

PUBLIC PARTICIPATION

ELECTRONIC REGISTRY

- The public can access information through a computerized database of specified ministries' proposals for policies, Acts, regulations and instruments. (** Instruments = Approvals, Orders, Licences, Permits)
- The Registry is being developed to be accessible by modem from a home computer or at a local public information centre.
- The public may request more information from a ministry, or provide comments on proposals entered in the Registry.
- The EBR will not duplicate public participation processes. (For example, the Environmental Assessment Act (EAA) already has a public participation process in place which meets or exceeds the requirements of the EBR. However, where there is no public participation process in place, as with exemptions under the EAA, the EBR will ensure public notice through the Registry.)

STATEMENT OF ENVIRONMENTAL VALUES

- Each ministry subject to the EBR will create a draft **Statement of Environmental Values** stating how it will take the environment into account in its decision making. There are 14 ministries subject to the EBR:
 - Environment and Energy
 - Agriculture and Food
 - Transportation
 - Municipal Affairs
 - Housing
 - Labour
 - Management Board
 - Natural Resources
 - Northern Development and Mines
 - Consumer and Commercial Relations
 - Finance
 - Health
 - Culture, Tourism and Recreation
 - Economic Development and Trade
- Draft Statements of Environmental Values will be placed on the Registry for public comment and input for a minimum of 30 days.

PROPOSALS FOR POLICIES, ACTS, REGULATIONS AND INSTRUMENTS

- Public notice will be given on the Registry of proposed Acts, policies and regulations which are environmentally significant, and for instruments subject to the EBR (by regulation).
- During the minimum 30 day notification period, the public may provide written comments on these proposals to the appropriate ministry, which must consider and respond to these comments (other participation rights may also be provided by ministries).
- Once a decision regarding the issuance of an instrument is made and placed on the Registry, a 15 day period is allowed for any resident to *seek leave to appeal* that decision to a Board identified by a ministry.

PUBLIC PARTICIPATION

CONTINUED

PUBLIC APPEALS

- The public can *seek leave to appeal* a decision to issue an instrument.
To *seek leave to appeal*:
- A person must demonstrate that they have an interest in the decision. (For example, the person had commented while it was posted on the Registry or they live close to the site, etc.) *and*,
- A person must demonstrate the decision is unreasonable, and that significant environmental damage would occur.
- If the *leave to appeal* is granted, the instrument is 'stayed' (suspended) until the hearing.

NOTE: If the person who applied for the instrument appeals during the 15-day appeal period, a notice will be placed on the Registry. This will give the public an opportunity to participate in the appeal.

ENVIRONMENTAL COMMISSIONER'S OFFICE

THE ENVIRONMENTAL COMMISSIONER

- The Environmental Commissioner will be appointed by the Legislative Assembly.
- The appointment will be for a five year term.

THE FUNCTIONS OF THE ENVIRONMENTAL COMMISSIONER

- To review and comment on a ministry's compliance with their EBR requirements.
- To assist ministries to develop their Statement of Environmental Values and use them in decision-making (upon request).
- To assist ministries with educational programs (upon request).
- To review the use of the electronic Registry.
- To review the use of discretion by Ministers under the Act.
- To review the handling of:
 - applications for review (Part IV);
 - applications for investigations (Part V);
 - complaints of employer reprisals (Part VII).
- To review ministry plans and priorities for conducting reviews.
- To monitor court actions and cases of public nuisance.

THE ENVIRONMENTAL COMMISSIONER WILL SUBMIT AN ANNUAL REPORT TO THE LEGISLATURE WHICH WILL INCLUDE:

- an assessment of how ministries have cooperated with requests made by the Environmental Commissioner;
- an assessment of ministries' compliance with EBR requirements;
- a summary of the information gathered by the Environmental Commissioner;
- a review of the use of ministerial discretion under the EBR; and
- tracking of proposals by ministries using the Registry.

REQUEST FOR REVIEWS

- Any two residents of Ontario together may submit a request for review to the Environmental Commissioner (EC).
- Within 10 days, the EC will forward the request to the responsible Minister.
- The Minister will determine if the review has been requested of an Act, policy regulation or instrument that is prescribed*, or a new Act, policy or regulation.
- Within 20 days, the Minister will acknowledge receipt (to applicants).
- Within 60 days of receipt, the Minister will give notice of a decision whether to conduct a review (to applicants, the EC, and other interested parties – 'others').
NOTE: See Considerations below.
- Within 30 days after the review has been completed, the Minister will give notice of the outcome (to applicants, the EC, and others).
- Names and personal information identifying applicants are confidential.
- The EC will report annually on the number and types of requests and Minister's responses.

CONSIDERATIONS BY A MINISTER WHEN DECIDING WHETHER THE PUBLIC INTEREST WARRANTS A REVIEW

- Is the Act, policy, regulation or instrument subject to EBR?
- Is it consistent with the ministry Statement of Environmental Values?
- Is there potential for harm to the environment?
- Is there relevant or new social, economic or scientific information which was not considered when the decision was made?
- Are there submissions from other interested parties?
- Are there substantial resource constraints to conducting a particular review within a ministry?
- Was there public consultation?
- How recently was the Act, regulation or policy enacted or issued?

* *Prescribed = identified by a Minister in a regulation that it will be subject to the EBR*

REQUEST FOR INVESTIGATION

- Any two residents of Ontario together may submit a sworn statement to the Environmental Commissioner (EC) requesting an investigation if they believe someone is breaking or is about to break the law.
- The violation would have to be of a prescribed* Act, regulation or instrument.
- If the Act etc. is prescribed, within 10 days of receipt the EC will forward the request to the responsible Minister.
- Within 20 days of receipt, the Minister will acknowledge receipt (to applicants).
- Within 60 days of receipt, the Minister will give notice if a decision was made not to investigate (to applicants, the EC, and other interested parties – 'others').

NOTE: See Considerations below

- Within 120 days of receipt, the Minister will inform the applicants that an investigation has been completed, or of the proposed timing for completion.
- Within 30 days after the investigation has been completed, the Minister will give notice of the outcome of the investigation to the applicants, the EC, and others.
- Names and personal information identifying applicants are confidential.
- The EC will report annually on the use of Requests for Investigation:

NOTE: A law suit may not be brought forward until an applicant has followed the requirements of a Request for Investigation except where there is imminent harm to a public resource.

CONSIDERATIONS BY A MINISTER IN DECIDING WHETHER TO CONDUCT AN INVESTIGATION

- Is the application frivolous?
- Is the alleged offence serious enough?
- Is the alleged offence likely to cause harm to the environment?
- Is an investigation under way or has one recently been completed?

* *Prescribed = identified by a Minister in a regulation that it will be subject to the EBR*

RIGHT TO SUE

CONTRAVENTION CAUSING HARM TO A PUBLIC RESOURCE

- A law suit may be brought by any resident of Ontario against an alleged polluter or other person suspected of breaking an existing law and causing significant harm to a public resource.
- *One can only go to court to protect a public resource. No award of damages is available to those who sue.*
- The EBR creates a new right to sue, but creates no new offences!
Defences against a law suit include:
 - compliance with environmental standards
 - due diligence
 - a reasonable interpretation of the requirements of an approval, licence, etc.
- Notice of a law suit must be given to both the Attorney General and the Environmental Commissioner.
- Notice of the suit will be placed on the Registry to give others an opportunity to participate.
- The court action could result in a remedy, dismissal, discontinuance, abandonment or settlement with the approval of the court.
- The remedies which a court could order include:
 - an order to stop the activity (an injunction)
 - an order to develop a plan for cleanup and restoration
 - any other orders (cannot be inconsistent with the *Farm Practices Protection Act*)

CONDITIONS ON INITIATING A LAW SUIT

1. ACTUAL CONTRAVENTION HAS OCCURRED:

A person believes that someone has broken an existing law resulting in harm to a public resource *and* has submitted a Request for Investigation to the Environmental Commissioner. This person may proceed to court, if;

- a response to the request for investigation has not been received in a reasonable time, or
- an unreasonable response was received

2. IMMINENT CONTRAVENTION SUSPECTED TO OCCUR:

A person believes that harm to a public resource is about to occur or that someone is about to break an environmental law and cause harm to a public resource.

RIGHT TO SUE

CONTINUED

3. HARM AS A RESULT OF NOISE, ODOUR OR DUST:

A person believes that harm has occurred to a public resource resulting from odour, noise or dust in an agricultural operation *and* has made an application to the Farm Practices Protection Board.

NOTE: Conditions 1 and 3 (above) do not apply where delay would result in significant harm or serious risk of significant harm to a public resource. Also, a two year limitations period applies.

PUBLIC NUISANCE CAUSING ENVIRONMENTAL HARM

- For the purposes of EBR, the existing rule which limited access to the courts for a public nuisance that causes harm to the environment has been removed.
- Any person who has suffered *direct* economic loss or *direct* personal injury as a result of a public nuisance causing environmental harm may sue for damages or other remedies.
- Farmers continue to be protected against suits in public nuisance under the *Farm Practices Protection Act*.

EMPLOYER REPRISALS (WHISTLEBLOWER PROTECTIONS)

- EBR will expand protection to workers who blow the whistle on polluting employers.
- An employee may participate in any activity under EBR such as:
 - exercising public participation rights: input to ministry Statement of Environmental Values, policies, Acts, regulations, etc.
 - requesting a review or investigation
 - giving evidence or information to an appropriate authority in a proceeding under the EBR or another prescribed Act
 - 'blowing the whistle' on a polluter
- Complaints may be made to the Ontario Labour Relations Board when an employee feels that as a result of their participation (above), an employer has dismissed, disciplined, penalized, coerced, intimidated or harassed them.
- A labour relations officer or the Board conducts an inquiry into the complaint.
- If the Board agrees that an employer did take improper action against an employee, the Board will order that the employer (within 14 days):
 - will stop doing or fix the act(s) in the complaint
 - will reinstate the employee, with or without salary for lost wages, *or*
 - will compensate the employee for loss of earnings in an amount to be determined by the Board.



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